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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,029	10/01/2003	Douglas L. Goedeken	P6187US	9524
7590 KAGAN BINDER, PLLC Maple Island Building, Suite 200 221 Main Street North Stillwater, MN 55082				
01/15/2009				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
01/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/677,029

Applicant(s)

GOEDEKEN ET AL.

Examiner

Lien T. Tran

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/21/08, 10/7/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 18, 19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 18-19, 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-2, 5,7-8,10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Freyn et al.

Freyn et al disclose an unproofed frozen dough comprising an acidic active agent, a basic active agent and yeast in amount of 2-20% . The dough products include dinner rolls, bread stricks, cinnamon rolls. The acidic active agent can be selected from the ingredients listed on column 2 lines 50-60. The frozen dough does not need to be thawed or proofed prior to baking; however, the dough may be thawed and proofed without detracting from the quality of a baked product. The method comprises the step of determining amount of ingredients to form the dough. (see col. 2 and col. 5)

The reference discloses all the limitations claimed. The property of being thawed and proof in a retarder at temperature in the range of 32-46 degree is inherent in the Freyn et al dough because it is the same dough containing the same ingredients as claimed. Furthermore, the limitation of " the dough can proof at retarder condition" is not a positive limitation; it is reciting what the dough can do, which is similar to intended use which does not determine the patentability of the product. The claims are directed at an unproofed frozen dough containing the recited ingredients and Freyn discloses such dough and the method of making the dough as recited in claim 12. With respect to the new limitation of the yeast and chemical leavening agent being in amount that the dough can proof at retarder conditions, Freyn et al disclose the yeast is present in amount of 2-20% and the leavening base is included in such amount that it is completely neutralized by the acid. The amount of leavening base is from 2.5-4%; thus, the amount of acid is also in such comparable range. Example 1 shows amounts of

3.55, 3.72 and 3.93. All these amounts are within the range claimed and disclosed.

Thus, the amounts of yeast and chemical leavening are present in amounts that would give the dough the property as claimed.

Claims 3,4,6,9,18-19, 21- 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freyn et al.

Freyn et al do not disclose encapsulated basic active, the raw specific volume as claimed and the use of fresh crumbled yeast .

Encapsulated leavening agent is well known in the art as exemplified in the Moder et al reference submitted by applicant. It would have been obvious to one skilled in the art to use encapsulated basic agent when desiring to prevent the action between the leavening acid and leavening base until baking time. It would also have been obvious to use fresh crumbled yeast when desiring a fresh ingredient. As to the specific volume, this parameter can vary depending on the several factors including the amount of leavening agents used, the type of product, the mixing time, the proportions of ingredients used etc.. It would have been obvious to one skilled in the art to determine the appropriate raw specific volume depending on the type of product and the specific texture and taste wanted. Such determination is within the skill of one in the art through routine experimentation. New claims 24-27 are included in the 103 rejection because they depend from claims 6 and 9 which are rejected under 103 because Freyn et al do not disclose the yeast used is fresh crumbled yeast. However, all the limitations in claims 24-27 are taught in Freyn et al. The acid leavening agents in Freyn et al include high solubility and low solubility agents and the amounts are within the range claimed.

In the supplemental response filed 10/7/08, applicant submits a second declaration. However, the declaration cannot be considered because it is barely legible. The examiner can read some words but most words are not legible; thus, a meaningful evaluation of the content cannot be carried out.

In the supplemental response filed 10/7/08, applicant refers to the declaration which cannot be considered because it is not legible. Applicant comment there is no apparent reason or benefit why one would have modified the Freyn et al dough so that it can proof because the Freyn dough is a freezer-to-oven dough. The rejection of the claims cited is a 102; thus, there is no modification suggested. The position is that the Freyn et al dough inherently has the proofing property or intended use claimed because they disclose the same dough. Also, Freyn et al disclose on column 5 lines 66-68, " the dough does not need to be thawed or proofed, albeit the dough may be thaw and proofed".

In the response filed 8/21/08, applicant addresses the declaration filed on 3/11/08. The declaration had already been addressed and was not found persuasive. The examiner maintains her position that the dough disclosed in Freyn et al is the same dough as claimed; thus, the dough inherently has the property as claimed in absence of convincing evidence showing otherwise. The new limitations do not define over Freyn et al as explained in the rejection above.

Applicant's arguments filed 8/21/08 and 10/7/08 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1408. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 14, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794